# EXPLANATORY MEMORANDUM TO

# THE CODE OF PRACTICE (RIGHT OF TRADE UNIONS TO ACCESS WORKPLACES) ORDER 2026

## 2026 No. 1103

## 1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Business, Innovation, Science and Trade and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

## 2. Declaration

2.1 Kate Dearden MP, The Minister of State for the Future of Work at the Department for Business, Innovation, Science and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 James Silcox, Deputy Director for Trade Union and Collective Rights, at the Department for Business, Innovation, Science and Trade confirms that this explanatory memorandum meets the required standard.

## 3. Contact

3.1 Sam Pearce at the Department of Business, Innovation, Science and Trade can be contacted by email at the following address with any queries regarding the instrument: Sam.pearce@businessandtrade.gov.uk.

## Part One: Explanation, and context, of the Instrument

## 4. Overview of the Instrument

***What does the legislation do?***

4.1 The purpose of this statutory instrument is to bring into effect the Code of Practice associated with the new right for trade unions to access workplaces. Section 59(2) of the Employment Rights Act 2025 inserted Chapter 5ZA into the Trade Union and Labour Relations (Consolidation) Act ("the 1992 Act"), to establish a new statutory framework for trade unions to access workplaces for the purposes of meeting, supporting, representing, recruiting or organising workers, and facilitating collective bargaining. The new Code of Practice provides practical guidance and information to support the effective implementation and understanding of the policy.

***Where does the legislation extend to, and apply?***

4.2 The extent of this instrument (that is, the jurisdictions in which the instrument forms part of the law) is England and Wales and Scotland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

## 5. Policy Context

***What is being done and why?***

5.1 Section 59(2) of the Employment Rights Act 2025 inserted Chapter 5ZA into the 1992 Act, to establish a new statutory framework for trade unions to access workplaces for the purposes of meeting, supporting, representing, recruiting or organising workers, and facilitating collective bargaining. The framework is overseen by the Central Arbitration Committee. The Central Arbitration Committee is an independent statutory body with responsibility for determining disputes and exercising functions relating to trade unions and collective employment relations. Where a union and employer are unable to agree access terms, the Central Arbitration Committee may make a determination refusing access; or imposing access and the terms that apply. The Central Arbitration Committee may also make declarations and orders in relation to enforcement of statutory access agreements. Section 70ZM(1) and (2) of the 1992 Act provides for appeals to the Employment Appeal Tribunal from those determinations, declarations and orders.

***What was the previous policy, how is this different?***

5.2 Prior to the coming into force of Chapter 5ZA in the 1992 Act, trade unions did not have a general independent right of access to workplaces. Instead, where there is not a recognition agreement in place, trade unions can only exercise their functions through individual members in the workplace, or through access arrangements reached on a voluntary basis with an employer. In situations where membership is limited, and there is no voluntary access agreement in place, there is limited scope for trade unions to exercise their core functions, not only in facilitating collective bargaining, but also in representing and supporting workers in employment-related matters.

## 6. Legislative and Legal Context

***How has the law changed?***

6.1 The Code is issued under section 203 of the 1992 Act. This section gives the Secretary of State a general power to issue Codes of Practice containing practical guidance for the purpose of promoting the improvement of industrial relations.

***Why was this approach taken to change the law?***

6.2 This Code itself imposes no legal obligations and failure to observe it does not in itself render anyone liable to legal proceedings. But section 207 of the 1992 Act provides that any provisions of this Code are admissible in evidence and are to be taken into account in proceedings before any court, tribunal or the CAC where they consider them relevant.

## 7. Consultation

***Summary of consultation outcome and methodology***

7.1 The Department for Business, Innovation, Science and Trade consulted on the draft Code of Practice between the 8 of April 2026 and the 20 of May 2026. During the consultation on the Code of Practice the Department engaged with interested parties such as Business Representative Organisations and Trade Unions through methods such as via email or virtual meetings.

7.2 The consultation received 793 responses from a range of stakeholders including Academics, Business Representative Organisations, Employers, Individuals, Legal

Representatives, Local Government Bodies, Trade Unions, and others. There were varying views throughout the consultation responses, with a mixture of support, opposition, and proposed changes to various elements of the policy, including the enforcement mechanism and the 21-worker threshold.

7.3 Having considered the responses received from the consultation the Government has made changes to the Code of Practice to reflect points raised and is satisfied that it is appropriate to proceed with the Code of Practice on trade union right of access.

7.4 More information and the Government's response to the consultation is available here: [1].

## 8. Applicable Guidance

8.1 The Code of Practice on the trade union right of access is itself guidance.

8.2 The Secretary of State will publish the code on GOV.UK.

## Part Two: Impact and the Better Regulation Framework

## 9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for the draft code. A De Minimis Assessment has been prepared for The Trade Unions (Right to Access Workplaces) Regulations 2026 and The Trade Unions (Right to Access Workplaces) (Required Information) Regulations 2026, which this code supports and is published on the GOV.UK website.[2]

***Impact on businesses, charities and voluntary bodies***

9.2 There is no, or no significant, impact on businesses, charities or voluntary bodies because the code itself only sets out practical guidance on complying with legal obligations. It does not impose legal obligations on these parties.

9.3 This Statutory Instrument commences the revised Code which does not impact small or micro businesses as it is statutory guidance and does not impose new legislative requirements on them.

9.4 There is no, or no significant, impact on the public sector because the Code of Practice does not impose new obligations on the public sector.

## 10. Monitoring and review

***What is the approach to monitoring and reviewing this legislation?***

10.1 The approach to the monitoring of the Code of Practice is to consider how effectively it sets out the requirements and standards relevant parties must adhere to when conducting statutory trade union right of access.

10.2 As part of this the Government has committed to review the right of access framework within six months of the implementation of the right of access.

10.3 A statutory review clause is not included in the instrument.

[1] www.gov.uk/government/consultations/make-work-pay-trade-union-right-of access

[2] Trade Union Statutory Access to Workplaces Final Impact Assessment (https://assets.publishing.service.gov.uk/media/6a4b9af3d200ca05e289e5e7/trade-union-statutory-access-to-workplaces-final-impact-assessment.pdf)

## Part Three: Statements and Matters of Particular Interest to Parliament

### 11. Matters of special interest to Parliament

11.1 The Department for Business, Innovation, Science and Trade considers it necessary for the Order bringing the Code into effect under Section 204(3) of the 1992 Act to come into force before the expiry of the "21-day" period.

11.2 The Code is intended to support the understanding and use of the new statutory trade union right of access, including by assisting trade unions and employers to engage consistently with the new framework, the operation of access agreements and the resolution of disputes. Bringing the Order into force on the commencement date will ensure that this guidance is available at the point the new framework is brought into effect. Delaying bringing the Code into effect in order to comply with the 21-day rule would postpone the availability of that guidance and the effective operation of the new statutory framework.

11.3 The main reason for this breach is that the Government has committed to stakeholders to implement in full the regulations and the Code of Practice on the trade union right of access by 30 October 2026.

11.4 The House of Lords debate was initially scheduled for 14 September, which would have provided ample time for the 21-day period. The tabling of a regret motion meant that this debate was pushed back until 14 October. It has therefore not been possible to meet the 21-day rule if the Government is to adhere to its publicly committed implementation timetable.

11.5 The draft Code of Practice was subject to public consultation between 8 April 2026 and 20 May 2026, during which the Department engaged with interested parties, including Business Representative Organisations and Trade Unions, and 793 responses were received. The Government has considered those responses and made changes to the Code before laying it.

11.6 In addition, the underlying policy framework was established in the Employment Rights Act 2025 and has been subject to parliamentary scrutiny during its passage.

11.7 The draft Code of Practice was laid in both Houses on 6 July 2026. The Department therefore considers that stakeholders and primary users of the Code, including trade unions and employers, by the stage at which the Code is approved by Parliament, will be familiar with the provisions contained in it.

11.8 As this Statutory Instrument serves as a commencement instrument, we hope that Parliament will understand the failure to comply fully with the 21-day rule in this instance.

### 12. European Convention on Human Rights

12.1 Minister of State for the Future of Work at the Department for Business, Innovation, Science and Trade made the following statement regarding Human Rights: "In my view the provisions of the Code of Practice: Right of Trade Unions to Access Workplaces are compatible with the Convention rights".

### 13. The Relevant European Union Acts

13.1 The Code of Practice is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").